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RICHARD A. MARSHACK
7

8 UNITED STATES BANKRUPTCY COURT
9 CENTRAL DISTRICT OF CALIFORNIA – SANTA ANA DIVISION

10 In re
11 NORTHERN HOLDING, LLC,
12 Debtor.
13

Case No. 8:20-bk-13014-MW

Chapter 7

STIPULATION RE; RESERVATION OF
RIGHTS BY CHAPTER 7 TRUSTEE
FOR RESPONSE OR OPPOSITION TO
RESNIK HAYES MORADI
APPLICATION FOR CHAPTER 11
ADMINISTRATIVE EXPENSE AND
ALLOWANCE OF FINAL FEES AND
COSTS

Date: November 22, 2021
Time: 9:00 a.m.
Ctrm: 6C
Address: 411 W. Fourth Street, Santa Ana,
CA 92701

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20 TO THE HONORABLE MARK S. WALLACE, UNITED STATES BANKRUPTCY JUDGE, THE
21 OFFICE OF THE UNITED STATES TRUSTEE, AND ALL INTERESTED PARTIES:

22 This stipulation is entered into between Richard A. Marshack, in his capacity as Chapter 7
23 Trustee ("Trustee") of the Bankruptcy Estate ("Estate") of Northern Holding, LLC ("Debtor"), and
24 Resnik Hayes Moradi LLP ("Firm") (together with the Trustee, "Parties"), with regard to the
25 following:
26

27 **Recitals**

28 A. On October 28, 2020, Debtor filed a voluntary petition for bankruptcy under Chapter

1 11 of Title 11 of the United States Code.

2 B. On November 17, 2020, as Dk. No. 25, Debtor filed an application to employ the
3 Firm as its general insolvency counsel ("Firm Employment Application"). Attached to the Firm
4 Employment Application was a retainer agreement between the Firm and Debtor, which did not
5 contain any attorney's lien provision, and stated that a retainer payment of \$35,000 would be made
6 by Debtor's principal Lee Coddington as a gift "to Debtor." The retainer agreement was executed on
7 October 28, 2020 (the petition date), and the retainer payment was also made on the petition date.
8 Trustee contends that this results in the retainer payment of \$35,000 being wholly treated as
9 unencumbered property of the Debtor and the Estate.

10 C. On January 4, 2021, as Dk. No. 40, the Court entered an order approving the Firm
11 Employment Application.

12 D. On February 26, 2021, as Dk. No. 67, the Firm filed a first interim application for
13 allowance of fees and costs ("First Interim Application"). The First Interim Application sought
14 authority to draw down on the \$35,000 retainer payment.

15 E. On March 24, 2021, as Dk. No. 96, the Court entered an order approving the First
16 Interim Application.

17 F. On June 15, 2021, as Dk. No. 116, the Court entered an order converting the case to
18 Chapter 7. Richard A. Marshack was appointed as the Chapter 7 trustee.

19 G. On September 7, 2021, as Dk. No. 212, the Court entered an order setting an
20 administrative claims bar date of October 29, 2021.

21 H. On September 29, 2021, as Dk. No. 221, the Firm filed its final application for
22 allowance of fees and reimbursement of costs ("Final Application"). The Final Application discloses
23 that the \$35,000 retainer payment was fully drawn down by the Firm.

24 I. Trustee has no objection regarding the extent or reasonableness of the Firm's services
25 rendered to the Debtor.

26 J. Trustee contends that fees paid to Chapter 11 claimants may be subject to
27 disgorgement pursuant to *Rus, Miliband & Smith, APC v. Yoo (In re Dick Cepek, Inc.)*, 339 B.R.
28 730, 736-39 (B.A.P. 9th Cir. 2006). The Firm contends that the drawn down retainer payment is not

1 subject to disgorgement.

2 The Parties agree and STIPULATE as follows:

3 1. Rather than litigate the issue before the ratable scheme of distribution of 11 U.S.C.
4 § 726(b) is implicated in this case, the Parties agree that an order approving the Firm's fees and costs
5 on a final basis as a Chapter 11 administrative claim has no preclusive effect regarding the Firm's
6 drawdown of the \$35,000 retainer. All rights, claims, and defenses regarding disgorgement are
7 preserved.

8 2. When lodging an order with the Court approving its fees and expenses on a final
9 basis, the Firm shall include language in a form acceptable to the Trustee regarding the reservation
10 of rights described herein.

11 3. This stipulation may be executed in one or more counterparts and facsimile or
12 electronic signatures may be used in filing this document with the Court.

13 Dated: November 10, 2021

RESNIK HAYES MORADI LLP

14
15 By: 

MATTHEW D. RESNIK
ROKSANA MORADI-BROVIA

16
17 Dated: November 10, 2021

MARSHACK HAYS LLP

18
19 By: 

RICHARD A. MARSHACK
Chapter 7 Trustee

20
21 Presented by:

22 Dated: November 10, 2021

MARSHACK HAYS LLP

23 By: /s/ D. Edward Hays

24 D. EDWARD HAYS
25 TINHO MANG
26 Attorneys for Chapter 7 Trustee
27
28

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
870 Roosevelt, Irvine, CA 92620

A true and correct copy of the foregoing document entitled: **STIPULATION RE: RESERVATION OF RIGHTS BY CHAPTER 7 TRUSTEE FOR RESPONSE OR OPPOSITION TO RESNIK HAYES MORADI APPLICATION FOR CHAPTER 11 ADMINISTRATIVE EXPENSES AND ALLOWANCE OF FINAL FEES AND COSTS** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On **November 11 2021**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page

2. **SERVED BY UNITED STATES MAIL:** On **November 11, 2021**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

DEBTOR

NORTHERN HOLDING, LLC
ATTN: OFFICER, A MANAGING OR GENERAL AGENT,
OR TO ANY OTHER AGENT AUTHORIZED BY
APPOINTMENT OR LAW TO RECEIVE SERVICE
13217 JAMBOREE RD #429
TUSTIN, CA 92782

☒ Service information continued on attached page

3. **SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL:** Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on **November 11, 2021**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

VIA PERSONAL DELIVERY

PRESIDING JUDGE'S COPY

HONORABLE MARK S. WALLACE
UNITED STATES BANKRUPTCY COURT, CENTRAL DISTRICT OF CALIFORNIA
RONALD REAGAN FEDERAL BUILDING AND COURTHOUSE
411 WEST FOURTH STREET, SUITE 6135 / COURTROOM 6C
SANTA ANA, CA 92701-4593

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

November 11, 2021
Date

Layla Buchanan
Printed Name

/s/ Layla Buchanan
Signature

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** CONTINUED:

- **INTERESTED PARTY COURTESY NEF:** William H Brownstein Brownsteinlaw.bill@gmail.com
- **INTERESTED PARTY COURTESY NEF:** Steve Burnell sburnell@sulmeyerlaw.com, msilva@tomcaseylaw.com
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- **ATTORNEY FOR RESPONDENTS ERICH RUSSELL AND JOANNE RUSSELL:** Kari L Ley Ley1238@att.net
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- **UNITED STATES TRUSTEE (SA):** United States Trustee (SA) ustpregion16.sa.ecf@usdoj.gov
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